

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARCIA WEST**

Claimant

VS.

**PRESBYTERIAN MANORS, INC.**

Self-Insured Respondent

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Docket No. 1,022,850

**ORDER**

Respondent requests review of the May 23, 2006 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

Following a preliminary hearing the Administrative Law Judge (ALJ) ordered the respondent to provide claimant treatment to her right shoulder with Dr. Curtis, the physician selected by claimant.

The respondent requests review of this preliminary hearing Order alleging claimant is not entitled to medical treatment for her right shoulder and arm because she failed to prove that her current right shoulder and arm complaints are related to the December 13, 2004 compensable injury. Respondent further asserts that even if claimant's right arm and shoulder were injured in the accident, she was released from treatment in March 2005 and has suffered no further aggravations and is therefore not entitled to medical treatment.

Claimant has not filed a brief in this matter, but would presumably request that the ALJ's Order be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The compensability of claimant's December 13, 2004 accident is not in dispute. Rather, it is the extent of her injuries which remain at issue. This is the second preliminary

hearing to be held in this claim. The first preliminary hearing focused claimant's request for low back treatment. The ALJ denied that request and that finding was affirmed by the Board.<sup>1</sup> Claimant secured new counsel and now seeks treatment for her right arm and shoulder complaints asserting that those complaints have never fully resolved, nor been completely evaluated since her initial accident.

Highly summarized, respondent argues that claimant is not entitled to the treatment she seeks first, because she did not ask for such care when she appeared for her first preliminary hearing and second, because she was released from treatment for her right elbow on March 15, 2005. Essentially what respondent argues is that whatever her present complaints to the right upper extremity and shoulder, given the passage of time and the lack of ongoing or contemporaneous complaints, they are not logically causally connected to her work-related accident of December 13, 2004.

The ALJ concluded claimant had met her burden of proof and granted her request for medical treatment to her right shoulder. The Board has reviewed the record and finds the preliminary hearing Order should be affirmed.

The evidence contained within the record is, admittedly, less than clear about the precise nature of claimant's injury, her resulting complaints, the sequela of her treatment and her ongoing complaints. However, it is clear that claimant injured her right shoulder and arm in the accident. Her initial accident report reflects "right shoulder" and "right arm".<sup>2</sup> Both a witness and her supervisor who gave statements indicate claimant complained of right shoulder pain immediately after the accident. The first physician who treated her diagnosed a mild AC joint strain secondary to her fall along with contusions to the right trapezius muscle.<sup>3</sup> She was thereafter referred to Dr. Herrenbruck who saw her on January 18, 2005 in what claimant describes was a rather brisk exam. His notes reflect a diagnosis of right elbow medial epicondylitis. On her second visit in March 2005, he indicates she was not doing much better and while she had no obvious pathologic findings, she had ongoing subjective complaints of elbow pain. He indicated he would expect her to have ongoing problems with her elbow.<sup>4</sup>

It is true that a significant period of time has passed since claimant's injury. But the mere passage of time does not, contrary to respondent's contention, defeat her claim. From the inception of her claim claimant has consistently maintained she injured her right upper extremity and shoulder. She was given some limited treatment to that area and

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<sup>1</sup> Board Order, 2006 WL 328225 (Jan. 11, 2006).

<sup>2</sup> P.H. Trans. (Aug. 31, 2005), Resp. Ex. B at 1.

<sup>3</sup> *Id.*, Cl. Ex. 1 at 63 (Dr. Hatesohl's ER report dated Dec. 13, 2004).

<sup>4</sup> *Id.*, Resp. Ex. A. (Dr. Herrenbruck's Apr. 8, 2005 letter).

discharged as of March 15, 2005, but according to her, those complaints continue. It appears from her testimony that her right upper extremity complaints were arguably ignored by the physicians and her past counsel. Like the ALJ, the Board is persuaded that claimant's present complaints of right shoulder complaints are due to her December 13, 2004 accident. Thus, the ALJ's preliminary hearing Order is affirmed.

Likewise, the ALJ's decision to appoint Dr. Curtis as the treating physician is affirmed. In spite of claimant's request for treatment, respondent has not provided treatment since March 15, 2004. Thus, the ALJ had the authority to appoint Dr. Curtis to serve as the treating physician.<sup>5</sup>

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated May 23, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August, 2006.

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BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant  
Kathleen N. Wohlgemuth, Attorney for Respondent and its Insurance Carrier

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<sup>5</sup> *Stanley v. LCA Mary Peck*, No. 256,159, 2004 WL 1301704 (Kan. WCAB May 21, 2004).